REMARKS

In the Office Action of July 12, 2005, the Examiner stated that Claim 16 (pertaining to an apparatus) and Claims 26-49 (pertaining to a method of playing) were drawn to distinct inventions and were thus subject to a restriction requirement. The Examiner went on to conclude that because the Applicant had received an action on the merits for the originally presented invention (as represented by Claim 16), the Applicant had constructively elected that invention and that newly-submitted Claims 26-49 were withdrawn from consideration. Finally, the Examiner went on to reject Claim 16 under 35 U.S.C. §102(b) as being anticipated by U.S. Patent 4,971,561 to Krane ("*Krane*"). The Examiner made the rejection Final.

In response to the Office Action, the Applicant now submits the following remarks and arguments.

I. Claim 16 Requires First and Second Paths to be Noncontiguous From Each Other

With regard to the game board, the Applicant recognizes that *Krane* teaches a playing surface having two paths: an outer "rectangular" path and an inner "circular" path (see, e.g., col. 3 lines 20-30). As noted previously, two separate paths are one important aspect of the present invention. The Applicant respectfully notes, however, that Claim 16 clearly requires the two paths to be "noncontiguous." As explained in the same section of *Krane*, and as further referenced elsewhere therein, the two paths of *Krane* are intentionally congruent to permit free movement of a token from one path to the other. The paths of *Krane* are thus not "noncontiguous."

Although the language selected by the Applicant to capture this important distinction is believed appropriate and sufficient, the Applicant is nonetheless open to suggestion if the Examiner believes alternative language might be more suitable.

II. Claim 16 Requires the Proportion of First-Behavior-Category Spaces to Second-Behavior-Category Spaces to be Substantially Higher in the Second Play Area Than in the First Play Area

Another important aspect of the present invention is the proportion of first-behavior-category spaces to second-behavior-category spaces in the first play area versus the proportion of similar spaces in the second play area. In the exemplary implementation shown in FIG. 1 of the present application, there are three (3) "Connection" spaces in the inner path (the "first play

area") and six (6) "Disconnection" spaces, while in the outer path (the "second play area") there are sixteen (16) "Connection" spaces in the outer path and only three (3) "Disconnection" spaces. Thus, there is a ratio of 16:3 of first-behavior-category spaces to second-behavior-category spaces in the second play area, as opposed to a ratio of only 3:6 (or 1:2) of first-behavior-category spaces to second-behavior-category spaces in the first play area.

This feature is captured by the limitation of Claim 16 "wherein the proportion of spaces corresponding to the first behavior category to spaces corresponding to the second behavior category is substantially higher in the second play area than in the first play area" (emphasis added).

A quick review of *Krane* shows that such a relationship is clearly not present between the two paths of the game board disclosed therein. More particularly, although eight different colored spaces (represented using different fill patterns in the board illustrated in FIG. 1 of *Krane*) are used, the percentage of each is identical, both as compared to the other colors and as compared between the inner and outer paths:

Color	No. of Spaces in Outer Path	% of Total	No. of Spaces in Inner Path	% of Total
red	4	12.5	3	12.5
blue	4	12.5	3	12.5
green	4	12.5	3	12.5
yellow	4	12.5	3	12.5
black	4	12.5	3	12.5
grey	4	12.5	3	12.5
violet	4	12.5	3	12.5
brown	4	12.5	3	12.5
Total (not incl. white)	**32**	**100**	**24**	**100**

As apparent from the table, when white spaces are not included (since white spaces are not associated with any behavior category whatsoever, their exclusion is appropriate), the proportion of spaces of each color to spaces of any other color is exactly the same when comparing the percentage of spaces of that color in the inner path to the percentage of spaces of that color in the outer path.

However, even when white spaces are included, as shown in the following table, the proportions do not vary substantially:

Color	No. of Spaces in Outer Path	% of Total	No. of Spaces in Inner Path	% of Total
white	**8**	**20**	**4**	**14.3**
red	4	10	3	10.7
blue	4	10	3	10.7
green	4	10	3	10.7
yellow	4	10	3	10.7
black	4	10	3	10.7
grey	4	10	3	10.7
violet	4	10	3	10.7
brown	4	10	3	10.7
Total (incl. white)	**32**	**100**	**24**	**100**

More particularly, the percentage of spaces of each color (other than white) is 10.7% in the inner path, and 10% in the outer path. Clearly, an increase in proportion of only 0.7% from the outer path to the inner path does not meet the "substantially higher" limitation of Claim 16.

III. Conclusion

In view of the foregoing, the Applicant respectfully submits that Claim 16 of the present application is now in condition for allowance, based upon the limitations therein. Thus, the Applicant respectfully requests that this claim be allowed.

Finally, it is respectfully requested that the Examiner contact the undersigned if any further action is deemed necessary by the Examiner in order to gain allowance of the present application, and if such further action may be accomplished through an Examiner's amendment or otherwise. Alternatively, as we discussed, an early indication of allowance or restatement of rejection is requested (preferably within one month) to permit the Applicant to make further plans as necessary. Your assistance in this is very greatly appreciated.

Respectfully submitted,
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